164 A

5. 100 A. 630; Koz.; 75, 97 A. 877; Con. omm'rs, 77 Md. 200 lidg. & Loan A... Shirk v. Seper. 144 dloway v. Safe far 36 A. 269. The conthe order appair at the appellant hat case which had byof before the most. ils court. The prauppellees, after the aled from, were .a yed in this care tr A stay could have 'two wars: F.m. ourt to that exect E real bond, who a miess the court ty the appeal should had had been first judgment which would be in-! as affordis: eal will have to 8. 113 Md 🔩 710, 134 U. K. 1913: Mills v £5. 132. 40 f. Mil. Co. Co. L. は、場合には、大 11 Ann Cas 6 Md 120 --Sin. 104 Mil. Amm, v. Tr. feby v. Them. Baldwin v C A 700 13 The the this City Into the De defer fart Brig that eri After examis-T. With the services 🗷 ីលាជា (ក្រុ 🐮 🚁 the contract of the Har its one Brian Street Street

117.7% Back I was A THE AD STREET The state of the same of the tracking in To In the en Company of the in the courts The second LOUGH OF A 1 TO and the second with the second

Little for every

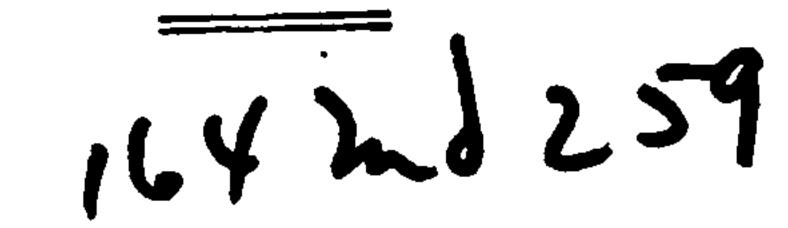
think in the

the the sign

mareuver of the plaintiff, who is itself the sidered, they can right that wrong at whatgurenaser and distributee of the proceeds. ever stage it may have reached. Thile completion of the sale pending the I see no basis for distinguishing the sale in all was not stayed, that fact did not, of and distribution in this case from others atwarse, affect the right of appeal from the tacked as having been unfairly accomplished ...missal of the interveners' petition. "The by purchasers, and think, therefore, that the -:ht thus conferred is unconditional and court needs to pass on the merits of the atis not depend upon the filing of an appeal tack exactly as it would if an appeal bond "ned." Shirk v. Soper, 144 Md. 269, 283, 124 had been filed. The order is shown to have the end appeal and review of the order ap- should be affirmed. realed from, and to reversal of the order, if found erroneous, remained as full and unafforted by the carrying out of the sale and disinbution as if a bond had been filed, unless the case should be one of those in which carring out orders and decrees pending appeals anders relief from error, if any, no longer easible; and I think it is not one of those.

If, pending an appeal, without stay, from refusal to enjoin a cutting down of trees, the trees are felled, judicial action could not put the trees up again; it would be nugatory; and an appeal seeking the relief might be dismissed as having now no possible object. It is for the same reason that, when pending an appeal without stay of execution, a sale has been completed to a bona fide purchaser, one not involved in any impropriety charged, te sale cannot be set aside upon establishwant of the fact of impropriety in bringing it about, and error in the order appealed from. Even in such cases the courts are not always rendered powerless, because often the promeds of sale remain susceptible of distribution in a manner that will remedy the impropriety and error, and the case must then be disposed of on the merits with that possibility of remedy in view, and not by dismissal of the appeal. Chase v. McDonald, 7 Har. & J. 199; Wampler v. Wolfinger, 13 Md. 33. 348: Lenderking v. Rosenthal, 63 Md. 28, 38; Garritee v. Popplein, 73 Md. 322, 324, 3) A. 1070; Raith v. Bldg. & Loan Assn. 140 Md. 542, 545, 118 A. 67: Herman v. Bldg. ♣ Loan Ass'n, 145 Md. 480, 490.. 125 A. 814, 817; Bowers v. Soper, 148 Md. 695, 698, 130 4.330. But, as is stated in these cases just 5. Mortgages €=319(3). rited, there is no obstacle to uncloing a com-Reted sale made, not to a bona fide purchas- ment of mortgage debt was conditioned on er, but to a party shown to have itself brought about the sale unfairly. "But even though the appeal bond be not reasonably and could proceed with foreclosure. fled, the rule is not available to protect a title vested under a purchase which has ten unfairly accomplished." Herman v. Bldg. & Loan Ass'n, supra. When the ground of attack is impropriety or unfairness in bringing about the sale, as in this case, it is a matter of indifference whether execution 7. Mortgages 5516. has or has not been stayed, for the courts before them and no third parties to be con- Laws 1924, art. 66, § 14).

1911, 916. The right of the interveners to been free from error, and for that reason



HEIGHE V. SALE OF REAL ESTATE.

No. 115.

Court of Appeals of Maryland. Feb. 17, 1933.

1. Mortgages 🖘 219, 300.

Mortgagee cannot be required to assign mortgage, but must unconditionally accept amount due when properly tendered.

2. Subrogation \$\sim 32.

Where person making payment on mortgage has interest in equity of redemption, or is lien creditor, and payment inures to benefit of others jointly liable with him under mortgage, he is subrogated to mortgagee's rights against such persons.

3. Mortgages ©⇒300.

Tender of amount due under mortgage is not legal if mortgagor annexes condition that mortgagee assign mortgage.

4. Mortgages €=300.

· If tender of amount due on mortgage was unconditional, mortgagee was bound to accept it and could not thereafter proceed with fore-

Evidence established that tender of paymortgagee's assignment of mortgage, hence mortgagee was not required to accept tender,

6. Mortgages ⇔526(6).

Evidence held not to establish that mortgagee who bid in property at foreclosure sale practiced fraud and deceit to suppress bid-

ding.

Statute empowers mortgagee to bid on viay undo the sale as effectually as they mortgaged property at foreclosure sale, not might prevent one not yet completed. Find- only to extent of protecting his interest, but ing the wrong, then, with the parties to it as freely as any other person (Code Pub. Gen.

For other cases see same topic and KEY NUMBER in all Key Number Digests and Indexes